IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 27.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.1285 of 2001

1.The State of Tamil Nadu,
rep., by its Commissioner and
Secretary, Food and Civil Supplies
Department, Madras-9.

2.The District Collector,
Virudhunagar.

3.The District Supply Officer,
Virudhunagar.

4.The Taluk Supply Officer,
Rajapalayam. ... Appellants

Vs.

1.S.Solaimalai Nadar

2.K.S.Thirupathiraja

3.K.Karuppasamy

4.S.Asaithambi

5.R.Govindan Pillai .. Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 11.12.1997 made in W.P.No.18292 of 1993 filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the Respondents to allot 1000 cards to each of the Petitioner for distribution of Kerosene under their respective licence.

For Appellants : Mr.K.Elango,
Special Government Pleader

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For respondents: Mrs.Kamalarani for
M/s R.G.Narendhiran

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order dated 11.12.1997 made in W.P.No.18292 of 1993, in and by which, the learned single Judge, after directing the respondents therein to allow 600 family cards to each of the petitioner instead of 500 cards as fixed by the authority, has partly allowed the writ petition.

2. Heard the learned Special Government Pleader for appellants as well as the learned counsel for the respondents.

3. According to the petitioners, they are retail dealers in kerosene and have been registered as retail dealers by the Licensing Authority under the Tamil Nadu Kerosene (Regulation of Trade) Order 1973. During the year 1969 certain regulations were introduced with regard to distribution of kerosene by an order made in G.O.Ms.No.234 dated 03.09.1979, wherein restrictions were imposed for the supply of kerosene to private retailers. However, pursuant to the direction of a Division Bench of this Court, certain amendments were made by the Government notifying that kerosene may be supplied only to the retail dealers for distribution to the public. The said direction was not accepted by the Division Bench of this Court. Against the order of the Division Bench, the State preferred an appeal to the Supreme Court and by an order dated 22.09.1989, the Supreme Court allowed the appeal holding that those relevant clauses "b" and "c" were not discriminated. Finally, the licences were issued to the petitioners by the competent authority for supply of kerosene for 500 family card holders only. It is stated that in the Rajapalayam Taluk, there were 800 card holders to whom kerosene has to be supplied. However, restricting the petitioners to supply only to 500 card holders each is causing great hardship and monetary loss to them, since they do not get any profit to meet out their livelihood. Hence, the petitioners have filed the writ petition seeking issuance of a writ of Mandamus directing the respondents therein to allow 1000 card holders to each of them for distribution of kerosene under the respective licence.

4. A counter affidavit has been filed by the Deputy Secretary to Government, Co-operation, Food and Consumer Protection Department, Chennai, highlighting the stand of the Government. The Government, in their letter No.202, Food and Co-operation Department dated 23.3.1982, have issued directions under the "Tamil Nadu Kerosene

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(Regulation of Trade) Order 1973". As per Clause "b" of the said directions, the private retailers holding Kerosene Retail Registration Certificates and who are exclusively dealing with kerosene for their livelihood, were attached with family cards not exceeding 500 for distribution of kerosene. Though the licencees were not successful, a direction was issued to the authority to give an opportunity to the petitioners to the effect that whether they are solely dependent on this trade for their livelihood. The present system, attaching 500 family cards to a Retail Registration Certificate holder is quite reasonable and the income derived from the sale of kerosene to 500 family card holders is sufficient for the Retail Registration Certificate holders to meet out their livelihood and therefore, there is no need to attach 1000 family cards to the Retail Registration Certificate holders.

5. With the above pleadings, the learned single Judge, by an order dated 11.12.1997, without assigning any reason by saying that ends of justice would be met, ultimately directed the official respondents to allow 600 cards to each of the petitioners instead of 1000 cards as prayed for. Questioning the said direction, the State Government and their officers have filed the present appeal.

6. It is not in dispute that as per the kerosene Control Order and the various orders issued by the Government, each licence holder is entitled to supply kerosene for 500 family cards. It is the grievance of the writ petitioners that the meagre income getting out of 500 family cards is not sufficient to meet out their livelihood and they are incurring loss to the extent of Rs.500/- per month. Therefore, the petitioners have requested to attach minimum of 1000 cards so that it would make them to run the shop with a reasonable profit. After conducting enquiry about the same, the Officers have denied the claim of the writ petitioners. It is also pointed out that inasmuch as they themselves engaged in selling kerosene of limited quantity at a fixed price, they were not spending any amount towards establishment charges and since they had minimised their expenditure, there would be considerable profit in the trade. It is also brought to our notice that now the Government of India have introduced Parallel Marketing System with a view to make availability of kerosene everywhere. It is further stated that in the Parallel Marketing System, the parallel marketer can carry and sell kerosene without any restriction. It is also stated that if the petitioners find that they are incurring loss with the restriction of 500 family cards, they may very well surrender the registration certificates and do business under the parallel marking system.

7. Apart from the above factual details, it is to be noted that after considering various aspects and in order to provide employment to several persons, the Government had decided to attach not

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exceeding 500 family cards to each retail registration certificate holder. The said decision cannot be faulted with. We are of the view that the present system of attaching 500 cards to retail registration certificate holders is quite reasonable and acceptable. We have already referred to the information furnished in the counter affidavit that the income derived from the sale of kerosene to 500 family cards is sufficient for the Retail Registration Certificate holder to meet out their livelihood. Even otherwise, it is not for this Court to step into the shoes of the Executive and alter the number of cards without adequate materials. As rightly pointed out by the learned Special Government Pleader, even if there is a case for increase in number of cards, it is for the concerned authority to decide, taking note of various aspects including the number of beneficiaries etc. The Judiciary cannot step in to the shoes of the Executive to play their role. Though the learned single Judge has enhanced the number of cards from 500 to 600, why it not be 800 or 900. We are satisfied that there is no material for arriving such conclusion. In these circumstances, the order of the learned single Judge dated 11.12.1997 made in W.P.No.18292 of 1993 is set aside.

The writ appeal is allowed. No costs.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commissioner and
Secretary, State of Tamil Nadu,
Food and Civil Supplies
Department, Madras-9.

2.The District Collector,
Virudhunagar.

3.The District Supply Officer,
Virudhunagar.

4.The Taluk Supply Officer,
Rajapalayam.

1 cc to Government Pleader, SR.47936
1 cc to Mr.R.G.Narendhiran, Advocate, SR.57962
mdr (co)
dv/15.12.06

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